

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

THE ESTATE OF ROGER D.	:	Case No. C-1-01-769
OWENSBY, JR., BY AND THROUGH	:	
ROGER D. OWENSBY,	:	Judge Spiegel
	:	
Plaintiff,	:	MOTION OF GOLF MANOR
	:	DEFENDANTS, STEPHEN
v.	:	TILLEY, ROBERT HEILAND
	:	AND CHRIS CAMPBELL
CITY OF CINCINNATI, et al.,	:	FOR AN ORDER STAYING
	:	TRIAL PROCEEDINGS
Defendants.	:	AGAINST THEM

Come now Defendants, Stephen Tilley, Robert Heiland and Chris Campbell, who, respectfully move this Court for an Order staying the trial of all issues related to the Golf Manor Defendants until the issues raised in the interlocutory appeal have been decided. This Motion is supported by the attached Memorandum.

Respectfully submitted,

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MEMORANDUM

I. BACKGROUND.

This Court issued an Order on May 19, 2004, wherein rulings were made on various pending Motions. A Motion for Summary Judgment had been filed on behalf of these Defendants raising certain defenses, including, but not limited to, qualified immunity. The Plaintiff also had at issue two Motions for Partial Summary Judgment. One Motion was directed towards the “Cincinnati” Defendants, the other against the “Golf Manor” Defendants.

The Court granted these Defendants’ Motion for Summary Judgment with respect to Plaintiff’s claims of excessive force. However, these Defendants’ Motion for Summary Judgment was denied as to alleged Constitutional violations for failure to provide medical care to Mr. Owensby, allegations of failure to train as well Plaintiff’s supplemental state law claims.

The Court entered summary judgment against these Defendants on Plaintiff’s allegations of failure to provide medical care to Mr. Owensby, and failure to train.

These Defendants filed an interlocutory appeal with the Sixth Circuit Court of Appeals on May 27, 2004. The appeal stems from this Court’s denial of the individual officers’ entitlement to qualified immunity and ruling Ohio’s Political Subdivision Tort Liability Act is unconstitutional.

The jurisdiction of the Sixth Circuit Court of Appeals for the interlocutory appeal is invoked pursuant to the collateral order doctrine. *Mitchell v. Forsyth*, 472 U.S. 511 (1985). Appellate jurisdiction is also invoked with regard to this Court’s ruling Ohio’s Political

Subdivision Tort Liability Act is unconstitutional. This constitutes a final order under state law.

The trial of this matter is scheduled to begin on June 14, 2004.

II. ARGUMENT.

It has long been recognized the entitlement to qualified immunity is an immunity from suit rather than a mere defense to liability. *Mitchell v. Forsyth*, 472 U.S. 511, 527 (1985). However, an interlocutory order does not divest the Trial Court of jurisdiction to continue deciding other issues involved in the case. *Weaver v. Univ. of Cincinnati*, 970 F.2d 1523 (6th Cir. 1992); *Moltan Co. v. Eagle-Picher Industries*, 55 F.3d 1171 (6th Cir. 1995). The only issue remaining with regard to the “Golf Manor” Defendants is the damages claim arising from the judgment on the failure to train claim. Yet, it is impractical to require Golf Manor to go to trial on this lone issue when the balance of the case against Golf Manor is pending before the Court of Appeals. In fact, if the Sixth Circuit should rule in favor of these Defendants on the issue of qualified immunity, there would no longer be a claim for failure to train. *Watkins v. City of Battle Creek*, 273 F.3d 682, 687 (6th Cir. 2002).

These considerations lead to the request that any triable issues remaining within the jurisdiction of this Court be stayed until the other issues on appeal concerning these Defendants are resolved. Such an approach reduces the possibility of multiple trials and potentially leads to the narrowing of issues to ultimately be tried, if necessary.

III. CONCLUSION.

Based on the foregoing, it is respectfully requested this Court stay the trial of all remaining issues as to only the Golf Manor Defendants.

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CERTIFICATE OF SERVICE

I hereby certify that on May 28, 2004, I electronically filed the foregoing Motion with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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